

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 184 TO 215 of 2000

in

SPECIAL CIVIL APPLICATION No 8558 of 1999

with

LETTERS PATENT APPEAL No 253, 254, 257 & 258 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS Sd/-

and

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BANK OF BARODA

Versus

NADIAD MACHINERY & ELECTRICAL MERCHANT CREDIT CO.OP SOC LTD

Appearance:

1. LETTERS PATENT APPEAL No. 184 of 2000
MR DARSHAN M PARIKH for Appellant No.
MR DF AMIN for Respondent No. 1
MR BS PATEL for Respondent No. 1
MR MANISH R BHATT for Respondent No. 2
- IN ALL OTHER LETTERS PATENT APPEALS
MR DARSHAN M PARIKH for Bank of Baroda
MR DV SHAH for Indian Bank

MR DF AMIN, MR BP TANNA, MR BS PATEL &
MR SAURIN MEHTA for Respondent-Depositors

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE M.S.SHAH

Date of decision: 01/10/2003

CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This group of Letters Patent Appeals is directed against the judgment and order dated 2.5.2000 of the learned Single Judge in Special Civil Application Nos. 3196 to 3217 of 1998 and connected petitions. The writ petitions were filed by co-operative banks/co-operative societies which are respondents herein. Some of the co-operative banks/societies have filed more than one petitions in respect of different fixed deposit receipts. Common contentions have been urged in all these appeals. Accordingly, the appeals were heard together and are being disposed of by this common judgment.

Proceedings before the learned Single Judge

2.0 The facts leading to filing of the petitions are as under :-

2.1 The petitions were filed by 22 co-operative banks or co-operative credit societies for directing Bank of Baroda and Indian Bank (hereinafter referred to as "the appellants" or "the Nationalized Banks") to refund the amounts of fixed deposit receipts which the petitioners had invested with different branches of Bank of Baroda at Surat and of Indian Bank also at Surat. When the petitioners made inquiries about their annual statement of accounts, they came to know that serious mischief had taken place in as much as the amounts invested by them with the appellants had been misappropriated or substantially misappropriated by fraudulent withdrawals in the form of loans or advances against those fixed deposit receipts without any authorization of the petitioner-banks/societies. In most of the cases, the fixed deposit receipts were taken for a period of one year or 366 days. The amounts involved in case of all the petitioners ran into about Rs.30 Crores.

2.2 In response to the notice issued by the learned Single Judge, the appellant banks appeared and contested

the petitions by contending that there are several disputed questions of fact. As against the contention of the petitioners that they had the original fixed deposit receipts and they had not availed of any loan/overdraft facility, the records of the appellants showed that the fixed deposit receipts were given by the petitioners to the appellants for pledging them as security for the advance obtained against the security of the said fixed deposit receipts after following due procedure. Subsequently, the fixed deposit receipts were prepaid and adjusted against the outstanding advances. It was also contended by the appellants in their counter affidavits that the petitions were filed for recovery of money and such petitions were not maintainable under Article 226 of the Constitution, that the petitioners had equally efficacious alternative remedy by way of filing civil suits, hence, the petitions deserved to be dismissed in limine. It was also pointed out that CBI inquiry was going on in respect of the subject matter of the petitions.

2.3 After considering the aforesaid preliminary objections, the learned Single Judge admitted the petitions on 16.2.2000 and made the following observations while declining to grant any interim relief:-

"Rule. No interim relief at this stage. It will be open for the respondent bank to consider the matter at their highest level if it is felt that the amounts have not been paid to the petitioners and that there is fraud committed internally by the bank's employees for which the creditors should not be held responsible and to take appropriate decision for paying the amounts that may be found by it due as payable to the petitioners."

2.4 When the petitions reached final hearing, the learned counsel for Bank of Baroda stated that pursuant to the above interim order of the Court, the matter was considered by the Board of Directors and it was decided that in case any undisputed amount or credit is lying, the same may be paid to such creditor with interest of the Savings Bank Account. As far as Indian bank is concerned, its learned counsel was not in a position to point out whether any such exercise was undertaken pursuant to the aforesaid interim order.

2.5 After hearing the learned counsel for the parties in the said group of petitions, the learned Single Judge

observed that, while disputed questions of fact may not be gone into by the Court in petitions under Article 226 of the Constitution, the Court was not in a position to give any definite finding as to how and in what manner the fraud, if any, had been perpetrated and how and exactly in what manner the conspiracy was carried out to its logical end and all these may be a subject matter of investigation and inquiry by the CBI and it may also be open to the concerned banks to hold proceedings against their employees, but all the same, the learned Single Judge held that the following important aspects were required to be considered :-

- (a) under the provisions of Sections 35A and 36B of the Banking Regulations Act, 1949, the Reserve Bank of India has been given the power to issue specific directions in the interest of banking policy in public interest to prevent the affairs of any banking Company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking Company;
- (b) the manner in which the large deposits to the tune of crores of rupees made by the depositors have been dealt with by the concerned branches of the appellants cannot be said to be in consonance with the banking policy and the same appears to have been conducted in a manner detrimental to the interest of the depositors and also causing prejudice to the interest of the two banking Companies themselves;
- (c) such scandals in a number of cases in a particular period of time with regard to particular parties have to be subjected to a thorough probe to be conducted by persons who have expertise in this regard so that the accountability and liability is fixed and if it is found that any depositor has been deprived of his money in a deceitful manner, such depositor or creditors may be remedied accordingly;
- (d) Investigations for fixing the criminal liability and the criminal cases may take a long time. Bona fide investors and depositors need not be made to suffer or wait till the results of such criminal cases reach the logical end especially when the depositors or co-operative societies who in turn have invested/deposited the monies belonging to a large number of persons with the

expectation that their monies would be safe in such nationalized banks;

- (e) the interim order dated 16.2.2000 passed by the learned Single Judge in the group of petitions was not taken by the appellants in right earnest probably because of the pressure of the employees or their union;
- (f) entrusting the inquiry to the appellants themselves would mean that they will be prosecuting their own cause and the whole truth may not come out.

IMPUGNED DIRECTIONS:

2.6 After setting out the aforesaid reasons, the learned Single Judge issued the following directions while disposing of the petitions by judgment dated 2.5.2000 :-

"I. A Committee is hereby constituted as under :-

- (i) The Deputy Governor of the Reserve Bank of India himself or his nominee as the Chairman of the Committee.
- (ii) One member to be nominated by the Deputy Governor of the Reserve Bank of India who shall be the officer of the highest rank in the Reserve Bank of India but subordinate to Dy. Governor.
- (iii) One member from the Bank of Baroda/Indian bank to be appointed by the Board of Directors of the concerned Bank preferably a Chief General Manager or an officer not below the rank of General Manager.

II. The member from Bank of Baroda would participate in the meeting of this Committee only when the cases relating to the Bank of Baroda are taken up and the member from the Indian Bank shall participate in the meeting of the Committee only when the cases relating to Indian Bank are taken up.

III. The Committee may evolve and follow its own procedure and will also have the power to

examine summon or examine the witnesses.

IV. This Committee shall examine each and every case on its own merits with reference to the records desired to be made available and will give its findings with regard to the amount due and payable to the concerned petitioners/parties and the rate of interest. The Bank of Baroda and Indian Bank shall inform the Committee in writing about the undisputed amount with full details. This Committee shall also go into the question of the rate of interest payable in case of the undisputed amount which is directed to be paid under this order. It will be also be open for the Committee to opine as to who were the officers/employees/party responsible for this conspiracy and fraud.

V. The findings as may be given by the Committee shall be binding on both the sides and shall be implemented forthwith.

VI. The petitioners/parties on receipt of any amount as a result of the findings of the Committee as aforesaid, shall also give an undertaking to the concerned Bank before the amount is withdrawn, that in case as a result of CBI inquiry, it is found and held by the concerned Court after the trial that any amount had been withdrawn by any such party, as a part of the aforesaid conspiracy, etc. they will return such amount to the concerned Bank.

VII. The Committee shall decide all these cases within a period of three months from the date the certified copy of this order is produced before Dy. Governor of the Reserve Bank of India.

VIII. It will be open for the petitioners/parties to agitate their grievance, if any, against the orders which may be passed as a result of the findings of the Committee constituted under this Court's order as aforesaid.

IX. These directions are in addition to and not in derogation of any legal remedy which any party may seek after the report of this Committee.

X. For the time being, the concerned Banks,

i.e. Bank of Baroda/Indian Bank shall disburse the undisputed amount, if any, with interest at the rate of Savings Bank Account to the respective petitioners/parties within 15 days from the date the copy of this order is produced before the concerned Bank. The payment shall be made through Demand Drafts in the name of the petitioners Societies/Banks/Depositors. However, if the Committee decides any rate of interest higher than the Savings Bank Account, the consequence shall follow."

The learned Single Judge accordingly allowed the Special Civil Applications with the aforesaid observations and directions with no order as to costs.

Interlocutory order dated 28.6.2000 in these appeals.

3 The appellants have challenged the aforesaid judgment dated 2.5.2000 by filing the present group of appeals. On 28.6.2000, this Court admitted the appeals for final hearing and after hearing the learned counsel for the parties, this Court granted interim stay only to the following extent :-

- (i) The operation of direction No. V (the findings as may be given by the Committee shall be binding on both the sides and shall be implemented forthwith) given by the learned Single Judge was stayed.
- (ii) Direction No. X given by the learned Single Judge was modified by directing that "payment or disbursement of the undisputed amount to the parties concerned would be subject to the condition that the said parties shall give valid discharge in writing to the Bank to relieve them of any future liability".

This Court allowed the rest of the directions to operate subject to modification that the time limit for making the report was extended from three months to six months from the date of receipt of the Division Bench order.

Supreme Court orders in Civil Appeals.

4. Bank of Baroda challenged the aforesaid interlocutory order dated 28.6.2000 before the Hon'ble Supreme Court in Civil Appeal Nos. 5890-5931 of 2000. The Hon'ble Supreme Court disposed of the appeals in

terms of the following order on 16-10-2000 :-

"Special leave granted.

After hearing the learned counsel for the parties, we dispose of these appeals in terms of the interim order dated 21st August, 2000 passed by this Court. The operative portion of the said order is as follows :-

'Learned Solicitor General states that
the bank will within one week pay the undisputed amount which is due from it to the depositors and/or deposit the same in Court. What the disputed amount is and who is entitled to receive it, may be investigated and reported by the Committee constituted by the Single Judge. The rest of the order of the High Court would stand stayed.'

It is stated that some undisputed amounts have been deposited in the Court. It will be open to the claimants to file appropriate applications before the Court and withdraw the same.

LPAs be heard early by the High Court if possible."

COMMITTEE REPORT

Constitution of Committee:

5.1 Pursuant to the aforesaid directions of the learned Single Judge as modified by this Court's interim order dated 28.6.2000, Reserve Bank of India issued the executive order dated 15.7.2000 appointing the Committee consisting of the following members :-

(a) Mr JR Prabhu, - Chairman
Banking Ombudsman, Mumbai

(b) Mr VS Das, Regional - Member
Director, RBI, Ahmedabad

(c) Mr RV Iyer, - Member
General Manager,
Bank of Baroda

or

(c) Mr S Arunachalam, - Member

General Manager,
Indian Bank

(As per the judgment of the learned Single Judge, the Committee consisted of three members - when the Committee dealt with the cases against Bank of Baroda, only the representative of Bank of Baroda was a member of the Committee alongwith the Chairman and another member appointed by Reserve Bank of India. Similarly, when the Committee dealt with the cases against Indian Bank, only the representative of Indian Bank was a member of the Committee alongwith the Chairman and another member appointed by Reserve Bank of India)

5.2 The terms of reference to the Committee were as under :-

- "(i) The Committee shall examine each and every case on its own merits with reference to the records and give its findings with regard to the amount due and payable to the concerned petitioners/parties and the rate of interest. It will obtain from Bank of Baroda and Indian Bank in writing full details about the undisputed amount which is directed to be paid under the Court's order.
- (ii) The Committee shall evolve its own procedure, examine, summon and examine the witnesses.
- (iii) The Committee shall opine as to who were the officers/employees/party(ies) responsible for this conspiracy and this fraud.
- (iv) The Committee may take the assistance of the officials of Department of Banking Supervision, Reserve Bank of India or any other officials of public sector banks for investigation purposes."

Methodology followed by the Committee:

5.3 The Committee adopted the following methodology:-

- "(i) The Committee constituted five inspection teams for carrying out the scrutiny of the records of the petitioners and the

two banks. Each team consisted of three officers - one each from the Department of Banking Supervision and the Urban Banks Department of the Ahmedabad Regional Office of Reserve Bank of India and one officer from the respective banks. While four teams scrutinized the records of the petitioners which had kept the deposits with Bank of Baroda, one of the teams scrutinized the records of the petitioners which had kept the deposits with the Indian Bank.

- (ii) A "Checklist" was prepared to serve as a guideline for carrying out the scrutiny by the inspection officers.
- (iii) Before the commencement of the scrutiny by the inspecting officers the members of the Committee briefed them as to the aspects to be looked into and the manner of carrying out the scrutiny of the records.
- (iv) All the petitioners as well as the two banks were asked to make their written submissions to the Committee with all the relevant documents.
- (v) Besides, the representatives of the petitioners were given an opportunity by the Committee to make personal submissions before the Committee and give all the facts relating to the transactions.
- (vi) Likewise, the representatives of the two banks were also given an opportunity by the Committee to make personal submissions before the Committee and give all the facts relating to the transactions.
- (vii) Besides, the branch managers/officers of the branches (where deposits were kept and advances availed of against the deposits) were asked by the Committee to make their personal submissions in relation to the deposits and advances transactions at their respective branches.

(viii) The Committee also asked the "middlemen" involved in the transactions to make personal submissions before it.

5.4 The Committee submitted its report dated 20.3.2001 and the same was taken on record of these proceedings. The report makes a reference to the appellants as "the banks" and the original petitioners are referred to as "the petitioners or depositors".

The report consists of the following chapters :-

Chapter 1 : Introduction

Chapter 2 : Developments leading to setting up of the Committee

Chapter 3 : Methodology adopted by the Committee

Chapter 4 : Scrutiny findings

Chapter 5 : Written submissions of petitioners

Chapter 6 : Oral submissions of petitioners

Chapter 7 : Submissions made by Bank of Baroda

Chapter 8 : Submissions made by Indian Bank

Chapter 9 : Submissions of bank officers

Chapter 10: Personal submissions of intermediaries

Chapter 11: Action taken by Bank of Baroda

Chapter 12: Action taken by Indian Bank

Chapter 13: Observations and recommendations

Annexure 1: Checklist provided to the scrutiny teams constituted by the Committee

Annexure 2: List of office bearers and officials of petitioners and

their advocates who appeared
before the Committee

Annexure 3: Statement showing disputed and
undisputed amounts

Summary & Major Recommendations:

5.5 The Committee made the following recommendations
in para 7 of Chapter 13 of the report :-

"(a) Repayment of deposits

The contention of the petitioner depositors has been that they have not availed of advance against the security of the deposits. The discharged original deposit receipts are with the banks. As the deposit receipts were not directly handed over to the petitioner depositors against their acknowledgments when the deposits were placed with the branches it is possible that the middlemen/brokers themselves have pledged these receipts as security for the advances. The signatures discharging the deposit receipts for the purpose of availing of loans were not verified by the branch officials to ensure that the signatures were those of the authorized signatories of the petitioner depositors. The loan amounts were not credited to the accounts of the petitioner depositors. The loans were disbursed through issue of cheques/demand drafts in favour of third parties like S.P. Investment. The drawals from the accounts of third parties like S.P. Investment were invariably in cash and it has not been possible to identify the beneficiaries who have withdrawn the amounts. The contention of Bank of Baroda has been that it is possible that the funds might have gone back to the society or they might have remained with the third parties. According to the bank, the societies have tacitly agreed to the FDRs being used in such a manner and the involvement of the co-operative societies/co-operative banks in becoming a party to the fraud or the fraud having taken place by the consent and connivance of the co-operative societies/co-operative banks has also to be taken into account. The investigations carried out by the officers deputed from the RBI and the two banks could not conclusively reveal that the funds have gone back to the co-operative societies/co-operative banks on account of the faulty procedure followed in

granting the loans and the drawals were made by way of cash from the accounts. The fraud could be perpetrated on account of the bank officials not observing the necessary and usual safeguards both at the time of accepting the deposits and while granting advances thereagainst. It is possible that there was nexus between the office bearers/officials of the co-operative societies/co-operative banks and the middlemen/brokers on one hand and also nexus between the officials of the bank branches and the middlemen/brokers in perpetration of the fraud. The question that arises against this background is whether under these circumstances the banks should be called upon to refund the deposits to the co-operative societies/co-operative banks. Even assuming that some of the office bearers and officials of co-operative societies/co-operative banks were aware of the fact that advances were being availed of against their deposits, the fact remains that co-operative societies/co-operative banks are not the borrowers of the funds. Neither they have executed the loan documents nor the advances availed of appear in their books.

The Indian Bank has submitted that the active role of the co-operative societies/co-operative banks in the perpetration of the fraud cannot be denied and the bank was used as a tool for their nefarious activities and that the active role played by the societies can only be proved by extensive and cogent evidences in a regular trial. It is true that as observed by the banks all the facts could emerge only after the investigation has been completed by the CBI and on the basis of evidence produced in a court of law and cross-examination of the witnesses. Such an exercise would obviously take a long time. The role of the bank officials in perpetration of the fraud has been quite significant. It is not merely procedure lapses but grave irregularities which have necessitated major penalty proceedings against them. The banks, therefore, cannot absolve themselves of their liability. It is also observed that in the case of some of the co-operative societies/co-operative banks as sizeable portion of their funds are blocked in deposits with the two banks they are finding it difficult to meet the claims of depositors who had placed the funds with them

in deposits.

Taking all the aforesaid aspects into account two members of the Committee (the Chairman, and the Regional Director, RBI, Ahmedabad office) are of the opinion that the banks should refund the disputed amounts of deposits to the petitioner depositors. The other two members of the Committee (Shri RV Iyer, Bank of Baroda and Shri S. Arunachalam, Indian Bank) are of the view that return of the deposits may amount to double payments to the petitioner depositors and that they would go by the official views of their respective banks."

(emphasis supplied)

[Court's Note :

In effect, the Committee took the aforesaid view by majority of 2:1 that the appellant banks should refund the disputed amounts of deposits to the petitioner-depositors because as per the judgment of the learned Single Judge, the Committee consisted of only three members - the Chairman (Banking Ombudsman Mr Prabhu), another member appointed by the Reserve Bank of India (Mr VS Das) and the third member was either the representative of Bank of Baroda or the representative of Indian Bank, depending on whether the investigation was against Bank of Baroda or Indian Bank.]

The Committee made the following observations for making common recommendations:-

"The Committee is required to examine each and every case on its own merits with reference to the records and its findings in regard to amount due and payable to the concerned petitioner borrowers in terms of the terms of reference based on the orders of the Gujarat High Court. The modus operandi in perpetrating the fraud in respect of all the petitioner depositors has been the same. There have been only minor variations here and there. Couple of petitioner depositors has mentioned during their deposition before the Committee that some of them had gone to the banks' branches alongwith the middlemen/intermediaries for placing the deposits. The photographs and specimen signature of all the authorized signatories of the co-operative societies/co-operative banks were not available

on the banks' records. The banks records also do not reveal that the authorized signatories had signed the account opening forms and the loan documents in the presence of the officials of the banks. The resolutions purported to have been passed for the purpose of availing of loans by the co-operative societies/co-operative banks have not been on their letterheads in almost all cases. In view of these reasons it has not been considered necessary to differentiate the cases of the petitioners and the Committee's recommendations are uniformly applicable to all the petitioner depositors."

5.6 Details of Payments to be made and the Conditions therefor:-

The Committee further states that -

A statement indicating the disputed and undisputed amounts submitted by the two banks to the Committee is given in Annexure 3. The undisputed amount deposited with the Gujarat High Court by Bank of Baroda amounts to Rs.3.16 crores and interest thereon at savings bank rate Rs.29.02 lakh. An undisputed amount of Rs.16.20 lakh has been remitted to the Income Tax Authority. The disputed amount of deposits aggregate Rs.20.00 crores. In the case of Indian bank, the undisputed and disputed amounts of deposits aggregate Rs.72.85 lakh and Rs.4.45 crores respectively. The bank has stated that it has deposited the undisputed amount of Rs.72.85 lakh with interest of Rs.1.66 lakh in the Court."

The refund of the deposits to the petitioner depositors by the banks should, however, be subject to certain terms and conditions which are as under :-

- (a) The co-operative societies/co-operative banks should execute necessary documents as per the banks' procedure.
- (b) the banks could take indemnity bonds from persons acceptable to them apart from the co-operative societies/ co-operative banks before effecting the refund of the disputed amount of deposits.
- (c) In case at a later date for any reason

the amounts are required to be refunded to the banks by the co-operative societies/co-operative banks they will have to pay interest at the prime lending rates of the bank concerned compounded at half yearly rest from the date of refund of the deposits by the banks till the date of repayment by the co-operative societies/co-operative banks to the two banks."

5.7 Recommendations regarding rate of interest:

As far as the recommendations for rate of interest on deposits are concerned, the Committee recommended that, for the reasons set out in para 7(b) of Chapter 13 of the report, the petitioner depositors should be refunded the disputed amounts without any interest and the undisputed amounts with interest payable on the deposits in the savings bank account.

5.8 Who committed the fraud?

As far as finding out the officers/employees of the parties responsible for the conspiracy and fraud is concerned, the Committee observed that the conspiracy and the fraud was masterminded by certain agents who were aided and abetted by the officials of the two appellant banks, but the possibility of nexus between such agents and office bearers/officials of some of the co-operative societies/co-operative banks cannot be ruled out. But it was not possible for the Committee to pinpoint their names. On the basis of the findings of their internal investigations, the two appellant banks have identified the officials who could be held responsible for the conspiracy and fraud and the appellant banks have started major penalty proceedings against them. The Committee was of the view that the officials of the two appellant banks could be held primarily responsible for the perpetration of the fraud, but the role of the concerned regional heads of the two appellant banks should also be examined.

SUBMISSIONS ON BEHALF OF APPELLANT-BANKS:

6. At the final hearing of these appeals, on behalf of Bank of Baroda and Indian Bank, Mr Darshan M Parikh and Mr Dharmesh V Shah, their respective learned counsel have made the following submissions :-

6.1 The learned Single Judge ought to have dismissed

all the petitions by upholding the following preliminary objections :-

- (i) All the petitions raised seriously disputed questions of fact which cannot be decided in writ jurisdiction under Article 226 of the Constitution.
- (ii) The real prayer in all the petitions was to direct the appellant banks to pay the fixed deposit receipt amounts to the petitioner depositors. The writ petitions cannot be entertained for adjudication or disbursement of such money claims.
- (iii) The petitioner-depositors had pledged the monies in the fixed deposit receipts to the appellant banks for taking loans/overdraft facilities and had also executed necessary documents in favour of the appellant banks for that purpose. The co-operative banks/co-operative societies are denying any such loans/overdrafts having been taken by them and they are also denying that any documents were executed or any resolutions were passed for taking overdrafts against the fixed deposit receipts. Such disputed questions of fact can only be tried in regular civil trials where a person is required to adduce oral as well as documentary evidence and such evidence will be tested by cross-examination so as to bring out the real truth. The petitioners cannot, therefore, be allowed to obtain money decrees for the fixed deposit receipt amounts without going through any such trial. All the petitioners have equally efficacious remedy of filing civil suits.

Strong reliance is placed on the decisions of the Apex Court in AIR 1985 SC 1265, AIR 1984 SC 1020, AIR 1997 SC 896 and 1997(1) SCC 156 in support of the contentions that the High Court should not entertain petitions under Article 226 of the Constitution where disputed questions of fact are involved or where the petitioners have made money claims which can be adjudicated upon in civil suits.

6.2 Having stated in the impugned judgment itself that the petitions raised disputed questions of fact and such disputed questions of fact cannot be gone into in the writ petitions, the learned Single Judge committed a serious error of law in giving the impugned directions for appointment or constitution of a Committee and directing the Committee to submit a report about the liability of the appellant banks to pay the petitioner depositors the fixed deposit receipts amounts and also to direct that "the findings as may be given by the Committee shall be binding on both the sides and shall be implemented forthwith". This amounts to delegation of judicial power which is not permissible. The learned Single Judge was called upon to try money claims, and the petitions, therefore, deserved to be dismissed. In any case if such money claims were to be gone into, the learned Single Judge could not have delegated the judicial power of adjudicating such claims to a Committee consisting of Executive Officers.

The learned counsel for the appellant banks have also relied on the decisions of the Apex Court in AIR 1965 SC 1486 and in (2000) 4 SCC 543 in support of their contention that judicial power cannot be delegated and that the High Court cannot appoint an arbitrator to decide the disputes between the parties as a delegate of the Court. They have also placed reliance on AIR 1978 SC 1263 and AIR 1988 Ker. 233 for contending that the banks are not liable for the frauds committed by their officers/employees.

6.3 Interim orders are always subject to final orders in the proceedings. Hence, the order of the Hon'ble Supreme Court in appeal against interlocutory order of this Court in these Letters Patent Appeals cannot preclude the appellants from raising all the contentions available to them including the challenge to constitution of the Committee itself by which the learned Single Judge has exercised legislative power. The very fact that said direction No. V has been stayed by the Letters Patent Bench by order dated 28.6.2000 and the fact that the Hon'ble Supreme Court has also in its orders dated 21.8.2000/16.10.2000 stayed the order of the High Court except the direction of the learned Single Judge requiring the Committee to investigate and report as to what the disputed amount is and who is entitled to receive it, indicate that the matter is still at large and this Court is not bound to give any direction to the appellant banks to make payments to the petitioners as per the report of the Committee, more particularly when the appellant banks are entitled to challenge the entire

judgment of the learned Single Judge including the directions for constituting a Committee to go into the highly disputed questions of fact.

6.4 Sections 35A and 36(d)(iv) of the Banking Regulations Act, 1949 empower the Reserve Bank of India merely to give directions in policy matters and not to adjudicate the disputed questions about liability of the bank to make payments of fixed deposit receipts.

6.5 The entire matter is still pending with the CBI which is investigating into all the allegations. The Committee has also observed that it was not possible to state whether the fixed deposit receipts lying with the petitioners were originals or photostat copies. Hence, the petitioners' case that they had not taken any amounts by pledging the fixed deposit receipts to the appellant banks was a matter which was required to be investigated in great details and till then, no direction could have been given by the learned Single Judge to appoint a Committee for going into the question and to direct payment of amounts as may be directed by the Committee.

6.6 The co-operative banks/societies were aware that the deposits made by them with the appellant-banks were going to be pledged to secure the advances which may be given by the appellant banks. Having been aware of this fact, they cannot take advantage of their own wrong and blame the appellant-banks for giving advances/overdrafts against the fixed deposit receipts. The petitioners also knew that they were going to get substantial amounts by way of commission on the loans advanced against the fixed deposit receipts. Having already obtained such benefit, such parties are estopped from claiming any discretionary relief from this Court.

6.7 The material on record indicates that the office bearers/officers of the petitioner-banks/ societies are also involved in the transactions in question and, therefore, if this Court were to pass any order in their favour, it would amount to this Court lending its assistance to such parties in completing their design of committing frauds against the appellant banks. The petitioners are at fault or in pari delicto with the officers of the appellant banks. Hence, the Court would not help the party to complete the fraud but would permit the property to lie where it is lying.

6.8 In any view of the matter, the Committee has not given clear findings on the issues involved and as to who have played the fraud. Hence, no order may be passed in

terms of the report.

SUBMISSIONS ON BEHALF OF ORIGINAL PETITIONERS-DEPOSITORS:

7. On the other hand, Mr DF Amin, Mr BP Tanna, Mr BS Patel and Mr Saurin Mehta, learned counsel for the original petitioners have opposed the appeals and have submitted that -

7.1 The main challenge to the constitution of the Committee has come to an end with the dismissal by the Hon'ble Supreme Court of the appeals filed by Bank of Baroda against the order dated 2.5.2000 of the learned Single Judge and against the order dated 28.6.2000 of the Division Bench of this Court and, therefore, it is no longer open to the appellants to challenge the constitution of the Committee as directed by the learned Single Judge. It is further submitted that the appellant banks have participated in the inquiry before the Committee and their representatives also participated as members of the Committee and, therefore also, it is not open to them to challenge the constitution of the Committee. Strong reliance is placed on the decision in 2000 (4) SCC 198 to contend that the appellant banks are estopped from challenging constitution of the Committee after having participated in the proceedings before the Committee.

7.2 In view of the fact that criminal investigation has been going on for a number of years and, therefore, the criminal case will also take substantial time and that similarly civil suits will also take a long time, the learned Judge was justified in giving the impugned directions. A reference is also made to the decisions of the Apex Court appointing fact finding committees while deciding the controversies raised in petitions under Article 226 of the Constitution. Reliance is also placed on the decisions in 1973 GLR 261, 23(1) GLR 340, AIR 1977 SC 1132 and AIR 1961 SC 1506 and AIR 1991 SC 247.

7.3 The Committee has examined the facts of each individual case and has also considered the stand of the appellant banks, the stand of the officers of the appellant banks, the action taken by Bank of Baroda against its officers and so also the action taken by Indian Bank. From a perusal of Chapter Nos.9 to 13 in the report, it is clear that fraud was played by the officers of the appellant banks and Bank of Baroda itself has placed 8 officers of 6 of its branches in Surat under suspension on the charge that they did not discharge their duties with integrity and honesty and took such

actions and committed such omissions which show lack of probity, integrity and bonafides and they also committed serious violation of duty and breach of trust reposed in them by the bank. It is, therefore, submitted that in view of the findings given by the Committee which consisted of representatives of the appellant banks themselves, it is clearly established that the officers of the appellant banks had played serious fraud in allowing loans/overdrafts being taken against the maturity of the fixed deposit receipts which deposit receipts were admittedly issued by the appellant-banks from the funds admittedly given by the petitioners to the appellant-banks.

7.4 The report made by the Committee directing the appellant banks to refund the amounts of fixed deposit receipts may be directed to be implemented so that the co-operative banks/societies which are passing through a difficult time will be able to get their legitimate dues.

7.5 The original petitioners may also be awarded interest on the fixed deposit receipts as agreed to by the appellant banks while issuing the fixed deposit receipts and the appellant banks also be directed to pay the entire admitted as well as disputed amounts with interest thereon at the rate mentioned in the fixed deposit receipts. It is submitted that the incentive or commission received by the appellants was properly reflected in the books of the petitioner-banks/societies and that such incentive was only to the extent of 4 to 10% in most of the cases and, therefore, the Committee was required to give directions regarding payment of interest at the contract rate.

APPELLANT-BANKS' STAND AS REFLECTED IN ACTION TAKEN BY THEM :

8. Before dealing with the preliminary contentions raised and submissions made on behalf of the appellant-banks on merits, it is necessary first to refer to the stand of the appellant-Banks before the Committee appointed pursuant to the orders of this Court and also to the action taken by them as recorded by the Committee on the basis of the documents produced before it, which throws a flood of light on the controversies between the parties and which action substantially takes out the "disputed" part out of the "disputed questions of fact".

8.1 The stand of Bank of Baroda in the written submissions was that Bank of Baroda had followed the procedure for receiving monies of the co-operative banks

for investment in fixed deposit receipts, there was no reason for the bank to be suspicious; the accounts were opened in accordance with the prescribed procedure and the advances were granted against the fixed deposit receipts in accordance with the bank's procedure. According to the written submissions of Bank of Baroda, the issue to be considered was whether the authorizations purportedly furnished by the co-operative banks were genuine or not. In so far as Bank of Baroda is concerned, such authorizations were in fact signed by the persons whose names appeared on the same and, therefore, it was perfectly normal for the bank to treat such authorizations to be correct and genuine. Since the said authorizations are being challenged by the petitioner-depositors, it is for them to establish that the said authorizations with necessary resolutions were in fact not sent by them. In any case, Bank of Baroda did not at all dispute that the fixed deposit receipt amounts were received by the Bank from the concerned co-operative banks/societies which are petitioners before this Court.

8.2 When the Committee appointed by this Court examined the facts of each individual case, Bank of Baroda pointed out that it had filed complaints with CBI in terms of its letters dated 4.9.1998 and 7.4.1999. In Chapter 11, the Committee has set out the action taken by Bank of Baroda by filing criminal complaints against its own officers :-

8.2.1 "Complaint dated 7 April 1999

Re : Complaint in the matter of fraud detected
in Loan/overdraft against the FDRs of
Cooperative Banks/Cooperative Societies
in Udhna, Lajpore, SSI Sachin Parle
Point, Navyug College and Nanpura
Branches of Bank of Baroda, South Gujarat
Zone, Surat.

We furnish below, in brief, specific acts of
commission of offences on the part of various
branch managers of the branches involved in the
scam.

1.
2.

3. The details of acts of omission and
commission observed on the part of following
officers during the period they were the Branch

Managers of the branches shown against their names in fraud of loan/Overdraft against the FDRs of Cooperative Banks/Cooperative Credit Societies, in South Gujarat Zone, Surat, are as under :-

Name of the Branch Manager Branch

1. Mr ND Shah Udhna
2. Mr PV Sopariwala Navyug College
3. Mr NR Vashi Parle Point
4. Mr BM Pandya Nanpura
5. Mr RI Thakkar Lajpore
6. Mr AJ Chitre SSI Br. Sachin

During the period the above officers were the Branch Managers of the respective branches, their deliberate acts of violation of various instructions/procedures laid down in the Book of Instructions of the Bank and circulars issued by various authorities in the Bank from time to time, have enabled the unauthorised/unconnected persons and their accomplices to plan and execute a systematic fraud on Bank's branches mentioned above. The Branch Managers by their such acts of omission & commission have connived in perpetration of the fraud against the Bank.

4. The details of such violations are enumerated hereunder:-

As admitted by Mr ND Shah in his letter dated 24.2.98, he used the services of unauthorised/unconnected persons for putting through the transactions of FDRs and loans/DD thereagainst of all the Cooperative Societies/ Cooperative Banks in Udhna Branch rather than dealing directly with the depositors/loanees. The other branch managers have also admitted to having used the services of middlemen in Fixed Deposits/Loans at their branches. The services of unauthorised/unconnected persons were used for the following :-

For acceptance of account opening forms of Coop. Societies/Cooperative Banks along with credential papers, resolutions, etc. for opening of their account without ascertaining the reasons for keeping deposits at their branches which is around 200 kms away from the place of its operation and also without verifying genuineness

of the documents, etc. submitted for opening of the account.

They also failed to verify the genuineness of the signatures of authorized signatories, the credential papers, photographs, etc. submitted by the unauthorised/unconnected persons with the branches of our bank at the centres where the Coop Societies/Coop Banks are having their accounts, more so when the deposits were for large amounts and loans were to be granted thereagainst soon after placement of the fixed deposits.

They handed over the FDRs to the unauthorised/unconcerned persons without proper authority of the depositors.

They accepted the FDRs signed by the depositors on its reverse, executed loan documents, resolutions for availing loan, signed loan cheques, etc. from the unauthorised/unconnected persons without verification of the genuineness of the signatures.

They sanctioned loans/overdrafts to the Cooperative Banks/Cooperative societies in contravention of the bye laws of the Cooperative Societies/Cooperative Banks and also without verifying the reasons for request of the loans immediately after placing of FDR.

... ..

The above lapses have been observed in case of all the Cooperative Societies/Cooperative Banks under reference which enabled the unauthorised/unconnected persons to substitute the genuine documents, if any, with fabricated/forged documents for the transactions mentioned above."

After stating the facts as aforesaid, Bank of Baroda also stated that it suspected the complicity of the officials of the co-operative banks/co-operative societies in perpetration of the fraud with the aforesaid branches of Bank of Baroda. The Bank further stated that their investigation revealed that the original fixed deposit receipts were under the bank's pledge/custody and were in fact deposited with the branch for availing loan/overdraft thereagainst and that the co-operative

societies are most probably holding colour xerox copies of the original fixed deposit receipts. The bank accordingly requested for an investigation and action according to law.

8.2.2 The complaint dated 4.9.1998 was also lodged by Bank of Baroda in connection with the following :-

"Complaint dated 4 September 1998

"Fraud of Rs.1.00 crore in Fixed Deposit and Current Account of The Dakor Nagarik Sahakari Bank Ltd., Dakor with Bank of Baroda, Navyug College and Parle Point Branches in Surat."

... ..
... ..

3. On enquiry with Navyug College Branch, Surat it was learnt that the branch had received 11 Demand Drafts all dated 21.12.97, aggregating to Rs.1 crore on 9.1.98 drawn on Bank of Baroda, Service Branch, Surat from The Dakor Nagarik Sahakari Bank Ltd., for keeping the same in Fixed Deposit, for 366 days. The said Demand Drafts were received by Shri PV Sopariwala, the then Sr. Br. Manager, Navyug College Branch, Surat, from one Smt Jyotiben Karani, who is a resident of White House, Gopipura, Hanuman Char Rasta, Surat.
4. Mr PV Sopariwala, had accepted the above Demand Drafts for issuance of fixed deposit without observing Bank's guidelines/instructions for opening of the new account and for preparing the FDR without obtaining prior permission of the Regional Authority.
5. While preparing the FDR No. 529140 dated 10.1.98 for Rs.1 crore, no account opening form and other credential papers of the fixed depositor were obtained by Navyug College Branch. But on 13.1.98, after allegedly obtaining discharge on the back of the FDR and also a request letter for prepayment, the proceeds were paid by bankers cheque dated 13.1.98 for Rs.1.00 crore favouring The Dakor Nagarik Sahakari Bank Ltd., Dakor.
6. On verification of the discharge on the back of the FDR prepared by Bank of Baroda, Navyug College Branch, it was observed that the

signatures were different when compared with the signatures on the specimen signature card of The Dakor Nagarik Sahakari Bank Ltd., Dakor maintained with Bank of Baroda, Dakor Branch wherein the said Sahakari Bank maintains accounts.

7. Thereafter, a Current Account in the name of The Dakor Nagarik Sahakari Bank Ltd. was opened with our Parle Point Branch, Surat on 15.1.98 with initial deposit of Rs.5,000/- with the introduction of one Mr Samir Parikh.
8. The Current account opening form was signed by Mr NR Vashi, the then Sr. Manager of Bank of Baroda, Parle Point Branch, Surat, without observing the necessary formalities. In fact, the two branches of Bank of Baroda did not obtain the photographs of the signatories, bye-laws of the cooperative Banks, Resolution of the Managing Committee, certificate of incorporation etc. as required under the extant guidelines and rules of the Bank for opening of new accounts.
9. The Banker's cheque of Rs.1.00 crore issued by Bank of Baroda, Navyug College Branch, Surat was deposited in the Current a/c of The Dakor Nagarik Cooperative Bank Ltd. opened with Bank of Baroda, Parle Point Branch, Surat described above, thereby facilitating conversion of funds from the Dakor Nagarik Sahakari Bank Ltd. to the account of similar name but opened unauthorisedly by persons other than authorized officials of the Dakor Nagarik Sahakari Bank Ltd. and withdrawal of funds belonging to said Sahakari Bank to private parties by issuing of cheques.
10. Thereafter, nine cheques were issued on the said Current Account favouring the following parties and the entire amount was withdrawn as shown below :-

S. No.	Cheque No.	Date	Payee	Amount (Rs.in Lakh)	Cheque collected by
1	527301	13.01.98	SP Invest-	9.00	Gujarat Indl.

			ments		Coop. Bank Ltd
	(GICBL)				
2.	527302	13.01.98	"	15.00	"
3.	527303	13.01.98	HR Patel	15.00	"
4.	527304	15.01.98	RK Velvets	12.00	"
5.	527305	15.01.98	Good Luck Enterprises	15.00	"
6.	527306	16.01.98	Shivam Invest.	15.00	Bank of Baroda Parle Point Br
7.	527307	16.01.98	SP Invest	9.00	GICBL
8.	527311	22.01.98	Good Luck	10.00	GICBL

Sub Total (in lakhs) 100.00

9. 517314 26.01.98 Self Rs. 4,900.00

Total Rs.1,00,04,900.00

11. The Gujarat Industrial Cooperative Bank Ltd., Surat, wherein the above mentioned beneficiaries of the cheques (except Shivam Investment) maintain accounts, advised us of the addresses of the beneficiaries as under :-

Name of the beneficiary Address

M/s RK Velvets 11/322, Kacharani Pole
Nanavat, Surat

M/s Goodluck B/1799, Gopipura
Enterprises Kayastha Mahollo, Surat

M/s S.P. Investment Gopipura, Sanghadia,
Wad, Surat.

12. It was further advised that accounts of M/s RK Velvets, M/s Good Luck Enterprises and M/s S.P. Investments have since been closed with the Gujarat Industrial Cooperative Bank Ltd., Surat. The address of Mr HR Patel has not been provided.

13. M/s Shivam Investments maintains Current Account with our Bank of Baroda, Parle Point Branch, Surat and its address as per Branch

records is 2/287, Main Road, Sagrampura, Surat. Shri Samir Premchand Parikh @ Shah is the proprietor of this firm and also of M/s S.P. Investments. It is suspected that Smt Jyotiben Karani and Shri Samir Parikh are hand in glove and they have masterminded this whole fraud.

14. The total loss to the Bank in the aforesaid fraud would be Rs.1.00 crore plus interest thereon and as such, you are requested to take up the case for investigation at the earliest and book the culprits."

8.3 Bank of Baroda placed the Branch Managers of all the six branches in question at Surat under suspension by orders passed between 17.3.1998 and 26.10.1998. Thereafter the bank placed under suspension two more officers in November 1998 and January 1999 and instituted major penalty proceedings against all the eight officers for major misconduct. The Articles of charges are as under :-

1. They did not take steps to ensure & protect the interest of the Bank.
2. They adopted such steps and took such actions, as were derogatory, prejudicial, detrimental or injurious to the interest of the Bank.
3. They did not discharge their duties with integrity and honesty and took such actions and committed such omissions which show lack of probity, integrity and bonafides.
4. They knowingly and willfully violated the bank's rules and established procedures.
5. In performance of their official duties and in exercise of powers conferred on them, they unauthorisedly exceeded their authority/powers and did not report the same and obtain approval/confirmation from higher authorities for such excessive actions.
6. They committed serious violation of duty and breach of trust reposed in them by the Bank.

7. They did not discharge their duties with devotion & diligence and took such actions and committed such omissions which showed a lack of care, caution or reasonable judgement and were grossly negligent.
8. Their acts and omissions were unbecoming of a Bank Officer.
9. They defied/flouted instructions of higher authorities.
10. They misrepresented and suppressed material facts from higher authorities.

Even the statement of all imputations made by Bank of Baroda against its officers contains the following allegations :-

- "They opened Fixed Deposit Accounts/Current Accounts of the Cooperative Societies/Cooperative Banks and accepted large amount of deposits even though the aforesaid depositors had their offices at far away places like Baroda, Dabhoi, Nadiad, Palana, Kapadvanj, Godhra which are almost 200 kms. away from the branches in Surat without ascertaining and recording reasons for opening such account/s at their branches which are not situated in the area of operations of the depositors for placing deposits and availing loans/overdrafts, more so when branches of Bank of Baroda are situated and operating at the places where the depositors are having their offices.
2. For the purpose of procuring deposits from the aforesaid depositors, they engaged mediators/middlemen/brokers which is contrary to the norms and instructions of the bank. Further, they involved a channel of middlemen/brokers right from the stage of opening of the accounts by accepting from them signed account opening forms, credential papers like resolutions, bye-laws, list of members of Managing Committee, Certificate of Incorporation, Photographs of depositors etc. without ascertaining the credibility of such middlemen/brokers and genuineness of the documents submitted by them for opening of the accounts.

3. They also did not get all such documents and signatures of authorized signatories cross-checked with the branches at the centres where the depositors are having their office/s and in many cases having banking accounts.
4. The resolutions accepted by them for opening of the accounts and also for sanctioning loans were not as per the requirement of the bank and contained direction to issue bankers' cheques in disbursement of loans to a third party viz. M/s S.P. Investment. Disbursement of loans to third parties in case of loan against FDRs is unusual. They did not put themselves to inquiry as to why various depositors located at different places wanted to take loan immediately after placing deposits and also wanted to make investment in only one firm viz. S.P. Investment.
5. The resolutions, in many cases do not specify its Sr.No., date, amount of loan required, mode of execution of documents and mode of charging the security. In one instance, the date of resolution is subsequent to the date of disbursement of loan.
6. In some cases they have not obtained introduction for opening of the accounts at all whereas in some cases proper introduction is not obtained. In some cases, the signatures of the authorized signatories on Specimen Signature Cards and account opening forms are notarized before a notary public which is not the accepted practice in the Bank and do not suffice the purpose of introduction.
7. The photographs of the authorized signatories of the depositors are not taken in some cases whereas those obtained are not authenticated by them, as they themselves used to receive the photographs and other papers for opening the accounts from the middlemen/brokers.
8. The authorized signatories did not remain present themselves to sign account opening forms as also for execution of loan documents which is contrary to bank's instructions.
9. The credential papers like Certificate of Incorporation, Bye-laws, List of Members of

Managing Committee, etc. required for opening of an account of Cooperative Society are not obtained in many cases and wherever obtained, are merely unattested photocopies. In some cases, to comply with the formality of obtaining the bye-laws, blank standardized formats of stationery dealers & forms sold by vendors are used without completely filling in the blanks and without obtaining authentication of authorized signatories of the cooperative societies/cooperative banks.

10. In case of accounts of cooperative banks, certified copy of license issued by Reserve Bank of India is not obtained.

11.

12.

13. They did not sign Specimen Signature Cards/Account Opening Forms of Fixed Deposit A/cs. & Current A/cs. as Br. Manager.

14. They directed the branch officials to issue certificates giving details of FDRs like FDR No., Period of Deposit, Rate of Interest, Amount of Deposit and its maturity value without obtaining specific request letter from the depositors and ascertaining reasons for asking such certificate when the bank had issued Fixed Deposit Receipts to the depositors. It is reported that such certificates were issued at the instance of the middlemen/brokers who had canvassed deposits from the Cooperative Societies/ Cooperative Banks by offering incentive/commissions to them on the condition that the original FDRs will not be delivered to them and instead Maturity Value Certificates will be issued to them. The depositors were also explained that if the original FDRs were delivered to them, they might ask for prepayment and such unauthorized commission/incentive was paid only if the deposit is allowed to continue till its full maturity. Under the guise of such misinformation to the depositors, the original FDRs were retained by the middleman/brokers and by forging signatures of the depositors, loans were raised to give loan to private parties at much higher rate of interest which would cover the interest payable on loan taken against FDR, incentive/brokerage paid to the depositors,

commission payable to middlemen/brokers and others and also sharing of profit margin for all those who engineered the fraudulent scheme.

15. The resolutions of various depositors available on the record shows more or less identical drafting of the resolutions, identical mode of signatures, identical type-setting of the rubber-stamps of the depositors and also identical lay-out, printing and get-up of the letter-heads on which the resolutions are typed. They as Senior Bank Officers did not notice all the above glaring similarities, but in fact facilitated such actions in accepting without doubt all such similar documents and relied upon the same to give loans in favour of third parties.

9. As far as the Indian Bank is concerned, its stand before the Committee in the form of written submissions was mainly as reproduced in Chapter 8 of the Committee report, which is as under:-

"The documents presented by the depositors include deposit opening forms, duly supported by respective resolutions, bye laws of the societies, certificates of registration and the demand drafts favouring INDIAN BANK. The officials of the Branch aver that possession of these documents especially DDs & bye-laws /resolutions were sufficient proof of the identities of the persons claiming to be the officials of the societies. However, the raising of loans by these societies and disposal of loan proceeds in favour of a third party other than the societies should have raised double caution regarding strict verification/identification of the people claiming to be representatives of the societies. And here the procedural lapses like non-obtention of photographs of signatories of the societies and non-obtention of permission from Registrar of cooperative societies for acceptance of deposits/granting of loans assume importance.

It should however be said that the Bank officials did verify the signatures of signatories of the documents with one of the branches of Bank of Baroda, Navyug College branch where the Bank officials have reported having personally gone for said verification.

To that extent the bank officials had taken precautions to ascertain the identity of the signatories on the documents."

The aforesaid stand would thus make it clear that the officials of the Indian Bank were also sailing in the same boat as the officials of Bank of Baroda and the discussion would, therefore, be common as regards the appeals of both the Banks.

As far as the case of the Indian Bank vis-a-vis Dabhoi City Cooperative Credit Society Ltd. and Dabhoi Nagrik Sahakari Bank Ltd. against whose officials (against the office bearers of the original petitioners in Special Civil Application Nos.3200, 3203 and 3205 of 1998) the Indian Bank has lodged an FIR with Mahidharpura Police Station on 31.3.1998 is concerned, we will be passing separate orders in view of the peculiar facts and circumstances relating to these two parties.

In Chapter 12 of the report, the Committee has referred to the internal investigation made by the Indian Bank, which has brought out the following major irregularities as reported by the Investigating team of the Indian Bank:-

- (a) Failure to ensure proper safe custody of numbered items, i.e. F.D. receipts.
- (b) Omissions and commissions in opening of Deposit accounts.
 - (i) Permissions from cooperative department is not obtained for opening of accounts in the name of the society.
 - (ii) Proper introduction was not obtained while opening deposit accounts. Signature of authorized signatories was verified by Bank of Baroda, Navyug College branch, Surat. Subsequent confirmation was not obtained from Bank of Baroda.
 - (iii) Passport size photographs of authorized signatories except in the case of The Roshan Cooperative Credit Society Ltd. where photograph of only one signatory was obtained.

- (c) Omissions and commissions in sanction of loans to cooperative societies against their deposits.
- (i) Byelaws of the cooperative societies are silent about their borrowing powers. However, loans were granted against the deposits merely on the strength of their resolution and loan proceeds were paid to third party i.e. M/s. S.P. Investment.
- (ii) Permission of Registration of Cooperative Societies before sanction of loan to the cooperative societies not obtained.
- (iii) Certified copies of the Resolution passed in the meeting of Managing Committee/Board of Directors authorizing loans/advances as per bank's prescribed format were not obtained.
- (iv) The proceeds of loan were paid by way of Banks Pay Order (BPO) in the name of M/s. S.P. Investments. They had neither been despatched by post nor signatures of the authorized signatories of the cooperative societies/ S.P. Investments were obtained on the counterfoil of the BPO book or on the reverse of the vouchers.
- (v) The officers made statement before the police authorities that cooperative society officials signed in their presence whereas one of the signatories i.e. President of Dabhoi City Cooperative Societies, Shri M.H. Durvesh is reported dead in 1993-94.
- (vi) Though the byelaws of the societies were obtained, they were not certified by an authorized person as true, update and correct.
- (vii) No entry had been made in the Documents Execution Register for the loans sanctioned to the cooperative societies.

In Chapter 12 of its report, the Committee has also referred to certain other observations made in the internal investigation report of the Indian Bank, some of which are as under:-

- "(i) In the case of loans sanctioned against the deposits of cooperatives, as regards, the bank's pay orders issued to the beneficiary "S.P. Investment", there is no way of finding how they have been handed over to the cooperatives.
- (ii) Shri R.L. Raval, Sr. Manager of the Surat branch of the Indian Bank alone had brought the account opening forms purported to have been obtained from the concerned cooperative societies/ cooperative banks for placement of deposits. In the absence of photographs of the office bearers, account opening forms and signature verification in majority of cases were authenticated only by Shri R.L. Raval. It was Shri R.L. Raval who delivered the completed loan documents formats purported to have been obtained from the cooperatives to the loan desk for preparation of vouchers.

It is unusual for a depositor to raise a loan the very next day at a higher rate of interest than the interest receivable for his deposits and that too when the loans are raised against the deposits of cooperative societies/cooperative banks. It would have been proper if an account payee BPO in favour of the concerned cooperative had been issued by the Indian Bank, instead the BPO is issued to a third party in a great hurry by all the three branches of Indian Bank. All the pay orders for the loan amounts are made and issued in favour of "S.P. Investments".

The Indian Bank has also called for explanations of its officers, such as Senior Manager and Assistant Manager of Surat branch and Senior Manager, Bharuch branch and Branch Manager of Sachin Industrial Park at Surat. Chapter 12 of the Committee report sets out the acts of omissions and commissions for which the Indian Bank itself had called for the explanation of the officers of the above designations.

10. The aforesaid voluminous data which became available to the Committee in the course of investigation and hearing (at both the stages the appellant banks did have an opportunity of explaining their case) do speak volumes about the so-called "disputed questions of fact".

The findings given by the internal investigating teams of the appellant banks themselves leave no room for doubt about the fraud played by some officers of the appellant banks. Whether some of the office bearers of cooperative societies/cooperative banks were also involved in such fraud may be the subject matter of inquiry being conducted by the CBI but the appellant-banks themselves cannot be absolved from the vicarious civil liability for the frauds committed by their officials.

11. Turning to the preliminary objections raised by the appellant-banks, the petitions are filed by the co-operative societies/co-operative banks against the two nationalized banks which are "State" within the meaning of Article 12 of the Constitution to honour their obligations. When the learned Single Judge found prima facie that the foundation of such denial by the nationalized banks was too shaky to throw out the petitions at the threshold, all that the learned Single Judge did was to constitute a Committee of three members - two of them highly placed officers of Reserve Bank of India i.e. the Deputy Governor or his nominee (Mr JR Prabhu, Banking Ombudsman, Mumbai Chairman and Mr VS Das, Regional Director, Reserve Bank of India, Ahmedabad Member) and one senior officer of Bank of Baroda/Indian Bank. The Committee was thus constituted as a 3 member fact finding committee to examine each and every case on its merits with reference to the records and give its findings with regard to the amounts due and payable to the concerned petitioners/parties and the rate of interest. The Committee was thus constituted to determine the civil liability of the appellant-banks and not for determining the criminal liability of any party or any individual.

12. As regards the controversy whether, in view of the orders of the Hon'ble Supreme Court, it is open to the appellant banks to challenge the constitution of the Committee -

12.1 In our view, the order dated 16.10.2000 of the Hon'ble Supreme Court disposing of the appeals (and not mere Special Leave Petitions), confirming the directions given by the learned Single Judge for constitution of the Committee for determining the disputed amounts and who are entitled to receive them were required to be investigated and reported by the Committee, has to be treated as a direction of the Hon'ble Supreme Court to constitute the Committee. Hence, the directions of the learned Single Judge got merged in the final order dated 16.10.2000 of the Hon'ble Supreme Court. In our

view, the Apex Court has not only permitted the direction regarding constitution of the Committee to operate, but has in positive terms directed that what the disputed amount is and who is entitled to receive it, may be investigated and reported by the Committee constituted by the learned Single Judge.

12.2 The learned counsel for the appellant banks have submitted that the Apex Court direction that the Letters Patent Appeal be heard early implies that everything was stated at the interlocutory stage and that the Apex Court left the question of legality of constitution of the Committee to be examined by this Court at the final hearing of the appeals. Such interpretation placed by the learned counsel for the appellant banks on the aforesaid order dated 16.10.2000 is misconceived.

After making it clear that the direction for constitution of the Committee for determining the disputed amounts and who are entitled to receive them is confirmed, the Apex Court stayed the rest of the High Court order meaning thereby this Court is required to decide in these Letters Patent Appeals as to whether the other directions given by the learned Single Judge are to be confirmed, modified or set aside. Particularly, direction Nos. V, VI, VIII and IX given by the learned Single Judge, reproduced hereunder, are still to be subjected to scrutiny in these appeals :-

V. The findings as may be given by the Committee shall be binding on both the sides and shall be implemented forthwith.

VI. The petitioners/parties on receipt of any amount as a result of the findings of the Committee as aforesaid, shall also give an undertaking to the concerned Bank before the amount is withdrawn, that in case as a result of CBI inquiry, it is found and held by the concerned Court after the trial that any amount had been withdrawn by any such party, as a part of the aforesaid conspiracy, etc. they will return such amount to the concerned Bank.

VIII. It will be open for the petitioners/parties to agitate their grievance, if any, against the orders which may be passed as a result of the findings of the Committee constituted under this Court's order as aforesaid.

IX. These directions are in addition to and not in derogation of any legal remedy which any party may seek after the report of this Committee.

In this group of appeals, therefore, this Court is still required to consider whether the aforesaid directions shall operate or whether they shall be modified or set aside.

12.3 In view of the above, the preliminary submission made by the learned counsel for the appellant-banks deserves to be rejected. However, since the learned counsel for the appellant-banks have raised several contentions having a bearing on the preliminary issue and have also cited various decisions, we proceed to deal with the same.

13. The rule that the High Court will not entertain disputed questions of fact in a petition under Article 226 of the Constitution and the rule that the Court will not exercise its extraordinary jurisdiction under Article 226 of the Constitution for adjudication of a money claim are self-imposed rules. There is no absolute prohibition that the Court can never entertain a writ petition when an alternative remedy is available. In each case the Court has to consider whether alternative remedy would be an equally efficacious remedy or not. The alternative remedy of civil suit is also a remedy where ultimately the Court goes into disputed questions of fact and arrives at conclusions on the basis of the evidence on record. The factual controversies in this group of matters revolves around the implementation or otherwise of the banking practices relating to opening of accounts and compliance with the banking norms before sanctioning or granting advances against pledging of fixed deposit receipts and their premature encashment in case of non payment of loans. Even if the parties were to raise this controversy in a civil suit, the Civil Judge having no expertise in the banking field would have to go into such disputed questions of fact and then give his findings whether the accounts were opened in accordance with the banking procedures and practices, whether the advances were given as per the settled banking rules, procedures and practices and so on and so forth and inferences to be drawn in case of non-compliance with such procedures and practices. The learned Single Judge, therefore, rightly took the view that instead of leaving it to the Civil Judge (Senior Division) to undertake this exercise, it would be in the fitness of things if these factual controversies are looked into by no less than three

experts in the banking field :-

- (i) the Deputy Governor of Reserve Bank of India himself or his nominee as the Chairman of the Committee (Mr JR Prabhu, Banking Ombudsman, Mumbai has been nominated by the Deputy Governor of Reserve Bank of India),
- (ii) One officer of the highest rank in Reserve Bank of India below the Deputy Governor (Mr VS Das, Regional Director, Reserve Bank of India, Ahmedabad) as Member, and
- (iii) one member from Bank of Baroda/Indian Bank to be appointed by their respective Boards preferably an officer not below the rank of General Manager.

14. Of course, the learned counsel for the two appellant banks have submitted that the banks did not get an opportunity to cross-examine the witnesses which they would have got in civil suits. The submission, however, misses the following important points :-

I Senior officers of the two appellant-banks of the rank of General Managers have been appointed as members of the Committee. The Committee comprising of three specialists in the banking field including two neutral officers who are senior officers of Reserve Bank of India appointed by the Reserve Bank of India has looked into the factual aspects in case of all the petitioner-depositors.

II The methodology evolved and adopted by the Committee (set out in Chapter 3 of the report and para 5.3 hereinabove) makes it clear that -

(a) The Committee constituted five inspection teams for carrying out the scrutiny of the records of the appellant-banks as well as the petitioners (four teams scrutinized the records pertaining to cases against Bank of Baroda, one pertaining to Indian Bank). Each inspection team consisted of three officers :-

- (i) one officer from the Department of Banking Supervision of RBI (Ahmedabad Regional Office)
- (ii) one officer from the Department of Urban

Banks of RBI (Ahmedabad Regional Office)

- (iii) one officer from the concerned appellant-bank

Thus the concerned appellant-bank had its representative on each inspection team. The three members of each inspection team had the opportunity to discuss and interact with each other before they submitted their observations to the Committee.

- (b) Before commencement of the scrutiny by the inspection teams, the members of the Committee appointed by this Court briefed the inspection teams as to the aspects to be looked into and the manner of carrying out the scrutiny of the records.
- (c) The inspection teams, each having an officer from the respective appellant-Banks also made a scrutiny of the records lying with the CBI.
- (d) The Committee received written submissions with documents from the appellant-banks as well as petitioner depositors and then the Committee gave personal hearing to petitioners, appellant-banks, the officers of the appellant-banks and the "middlemen" involved in the transactions under scrutiny.

III Thus at each stage - formulation of methodology, investigation and hearing - each appellant-bank had through its representative active association, involvement and interaction with the two senior experts from the RBI. Even then, neither the member from Bank of Baroda nor the member from Indian Bank has dissented from the findings given by the Committee about the role played by the officers of the two appellant-banks. The only dissent expressed by the said members representing the two appellant-banks is in respect of the final recommendation whether the two banks should repay the fixed deposit receipt amounts to the co-operative societies/banks.

IV The appellant-banks have not made any allegation or even given a hint against the objectivity and impartiality of any member of the Committee or of any inspection team.

V When the entire controversy is examined in this light, this Court has no hesitation in holding that in its constitution as well as functioning the Committee meets with the test of rationality, reasonableness, objectivity and impartiality which could not have been improved upon. There could not have been a better qualified, more experienced and more objective forum than such a high power committee consisting of experts in the banking field. The directions given by the learned Single Judge need to be upheld without any diffidence or apology. The notion that ruthless cross examination of a party or his witness by an unfriendly lawyer of the opposite side is the only method of finding out the truth may be the product of the adversary system of litigation where each case must be carried to its logical conclusion even if it leads to delay of decades and which is insensitive to the consequences to which it leads or to the situation where it may drive the seekers of justice outside the legal system.

VI Ultimately the power and the duty of a Court, whether exercising writ jurisdiction under Article 226 of the Constitution or exercising civil jurisdiction under Section 9 of the Code of Civil Procedure, is to dispense justice. The facts gathered by the Committee consisting of three highly placed banking experts point to the inescapable conclusion that the fraud in question would not and could not have taken place but for the active and direct connivance of the officers of the two appellant banks which are nationalized banks and are State within the meaning of Article 12 of the Constitution and the appellant-banks cannot, therefore, be absolved from their civil liability to repay the amounts received by them for investment in fixed deposit receipts for one year when the appellant-banks' officers, soon (next day or within a week) after receiving the amounts for investment in fixed deposit receipts for one year, granted advances in favour of third parties - in several cases, the same party "S.P. Investments" without ensuring that the alleged request and the alleged authorization for granting such advances/overdrafts against the fixed deposit receipts came from authorised representatives of the co-operative banks/societies which were governed by their own

rules and regulations having statutory force.

15. In view of the above discussion, the directions given by the learned Single Judge are sustainable even without any reference to the provisions of Section 35A and 36 (1)(d)(iv) of the Banking Regulations Act, 1949 (hereinafter referred to as "the Act"). However, since the learned counsel for the parties have addressed us on this aspect, we have gone through the said provisions and we are in agreement with the learned Single Judge that Section 35A of the Act provides that where the Reserve Bank is satisfied that to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors, it is necessary to issue directions to any banking company in particular, the Reserve Bank may from time to time issue such directions as it deems fit, and the banking company shall be bound to comply with such directions. In the peculiar facts and circumstances of this case, this Court is satisfied that in the interest of the depositors who filed the present group of petitions giving rise to these appeals, it was necessary for the officers appointed by the Reserve Bank to look into their grievance and to issue appropriate directions to the appellant banks. That is all that the learned Single Judge has done and the learned Single Judge has shown indulgence by directing that the inquiry be made by a Committee, which also includes a representative of each of the appellant banks, as and when the matters relating to the concerned appellant banks are looked into. We are, therefore, clearly of the view that the directions given by the learned Single Judge for constitution of the Committee do not call for any interference on this ground either.

16. The learned counsel for the parties have relied on several decisions.

16.1 The decision in LIC of India vs. Kiran Sinha, AIR 1985 SC 1265 is relied upon in support of the contention that a petition under Article 226 of the Constitution cannot be entertained for enforcement of a money claim.

The decision was rendered in the facts of that case and the Apex Court did not lay down any principle of law, but recorded the concession of the learned Attorney General that he would recommend to the LIC to pay a sum of Rs.40,000/- to the respondent in full settlement of her claim and the statement of the learned counsel for the respondent that the respondent would accept the same

in full settlement of her claim.

16.2 Strong reliance is also placed on the decision in Tamil Nadu Electricity Board vs. Sumathi, (2000) 4 SCC 543. In the said case, the respondents were legal heirs of persons whose death had been caused by electrocution. They filed writ petitions under Article 226 of the Constitution claiming compensation, contending that electrocution had resulted from improper maintenance of electric wires or equipment by the Electricity Board. The High Court appointed an arbitrator to decide the question of compensation and pending the arbitration proceedings, interim compensation of Rs.30,000/- was awarded to each respondent. The arbitrator gave his awards, which were made rule of the Court after objections were heard and the High Court examined the evidence recorded by the arbitrator.

It was contended in appeal before the Hon'ble Supreme Court that the High Court had strayed beyond its authority and that by referring the matter to arbitrator, the High Court had created a new jurisdiction to deal with the alleged negligence of the appellant Board. It was contended that creation of such forum was a legislative act and was not within the authority of the High Court. However, the Apex Court did not accept such a submission and did not accept that there was any absolute embargo on the power of the High Court to entertain disputed questions of fact. On the contrary, the Hon'ble Supreme Court reiterated the following principle laid down in U.P. State Coop. Land Development Bank Ltd. vs. Chandra Bhan Dubey, (1999) 1 SCC 741:-

"Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law

validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial 'bull in a china shop' in the exercise of its jurisdiction under Article 226."

(emphasis supplied)

After reiterating the above principles, the Apex Court was of the view that the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the Arbitration and Conciliation Act, 1996 in absence of any arbitration agreement between the parties. Even after making such observations, the Apex Court also reiterated the following observations made in *Municipal Board, Pratabgarh vs. Mahendra Singh Chawla*, (1982) 3 SCC 331:-

"While exercising the discretionary jurisdiction under Article 136, law is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and mould the final order. In exercise of the extraordinary jurisdiction under Article 136 the discretion should be so exercised by the Court that justice may be rendered to both the parties."

After reiterating the above observations, the Apex Court, even while allowing the appeals and dismissing the writ petitions, restrained the appellant Board from recovering any amount from any of the respondents which was paid to them in terms of the impugned judgments of the High Court.

From the aforesaid decision, therefore, it is clear that the limitations imposed upon the power

conferred upon the High Courts under Article 226 of the Constitution are self-imposed guidelines. Those guidelines cannot be mandatory in all circumstances. Moreover, the aforesaid decision will not apply in the facts of the present case for two reasons. The direction given by the learned Single Judge that the findings of the Committee shall be binding to both the parties and shall be implemented forthwith was stayed by order dated 28.6.2000 of this Court. We have heard the objections lodged by the parties against the recommendation made by the Committee. Apart from that fact, the most significant feature of the Committee's report is that senior officers of both the appellant banks who were appointed as members of the Committee are parties to the report and their only dissent is in the final recommendation, but they have not recorded any dissent in the observations made and the findings given by the Committee regarding the role played by the officers of the two appellant banks and that the officials of the two appellant-banks "could be held primarily responsible for the perpetration of the fraud" (page 152 of the report). In view of this significant feature of the case, the decision in the case of Tamil Nadu Electricity Board is not applicable to the facts of the present case.

16.3 As far as the decision in State of M.P. vs. M.V. Vyavsaya & Co. (1997) 1 SCC 156 is concerned, that dealt with the interim orders passed by the High Court restraining recovery of arrears due from contractors having liquor vending licence. The High Court had directed the State Government not to re-auction the liquor shops, to make supplies to the licensee and to give back a part of the arrears payment received by the State Government to the licensee for reinvestment and also directed appointment of an advocate as commission to act as 'conduit' between the State and the licensee and appointment of a commission comprising two advocates to decide daily disputes between the parties. All this was done with the knowledge that the relevant facts were in dispute but there was no finding that the State had acted in contravention of the law or that they had failed to perform such duty. Hence the Apex Court held that the High Court exceeded its jurisdiction in issuing the interim orders which resulted in substantial loss of revenue to the State.

As already indicated earlier, the learned Single Judge has found that there was a fraud which was required to be investigated and, therefore, the Committee comprising of three highly placed banking officers (two

senior officers of Reserve Bank of India and one from each of the appellant banks) was constituted to go into such questions of fact and, therefore, the present case stands entirely on a different footing from the case in State of M.P. vs. M.V. Vyavsaya & Co. (Supra).

16.4 As against the above decisions relied upon on behalf of the appellant-banks, strong reliance is placed on behalf of co-operative banks/societies on the decision of the Apex Court in M/s Hyderabad Commecials vs. Indian Bank, AIR 1991 SC 247 wherein the Indian Bank (one of the appellants herein) transferred approx. Rs.13 lakhs from the account of one of its customers to another unauthorizedly and took up the plea subsequently that the amount was transferred on oral instructions of the customer. The Apex Court not only held that the plea of oral instructions did not inspire any credence, but also made the following observations :-

"The Bank's conduct is reprehensible. We are constrained to observe that such functioning of a Nationalized Bank is detrimental to public interest and if it follows the practice of transferring money of its customers to some other persons account on oral authority, people will loose faith in the credibility of Bank.

Since the basic facts regarding the unauthorized transfer of the disputed amount from the appellant's account as well as the Bank's liability was admitted, there was no justification for the High Court to direct the appellant to file suit on ground of disputed questions of fact. The respondent Bank is an instrumentality of the State and it must function honestly to serve its customers."

In view of the findings given by the Committee, which are also based on the findings given by the internal investigation team of the appellant-banks themselves, we are of the view that both the appellant-banks being nationalized banks, which are State within the meaning of Artical 12 of the Constitution, cannot be permitted to avoid their civil liability on the ground of "disputed" questions of fact or alternative remedy in view of their own action and internal investigation reports as discussed in para 8 of this judgment.

17. Having disposed of the preliminary objections, which discussion also covered the findings given by the

Committee on merits of the controversy, the question that remains for consideration is whether the parties be directed to implement the report as it is or whether any of the challenges to the findings given in the report is required to be examined.

17.1 The original petitioners i.e. the co-operative societies and the co-operative banks have contended through their learned counsel that the recommendation for payment of principal amounts of fixed deposit receipts be implemented, but the recommendation made by the Committee regarding payment of only savings account interest rate on admitted amount and non-payment of any interest on the disputed amounts may be modified and instead the two appellant banks be directed to pay the entire principal amount of the fixed deposit receipts with interest at the contractual rate.

17.2 Bank of Baroda as well as Indian Bank have filed their respective objections contending that the report may not be accepted mainly because it would amount to allowing the petitioners to take advantage of their own fraud. Strong reliance is placed on three decisions which will be dealt with hereinafter.

18. After considering the written submissions, documents and oral submissions on behalf of Bank of Baroda and Indian Bank, their officers, the middlemen and the petitioner depositors, the Committee summarized the acts of omissions and commissions on the part of Bank of Baroda/Indian Bank in paras 4 to 6 of Chapter 13 of the report as under :-

"(a) The branch managers did not deal directly with the petitioner depositors but accepted the services of middlemen/brokers for procuring the deposits from them. This is contrary to the instructions of the banks.

(b) The middlemen/brokers brought the account opening forms, specimen signature cards, resolutions and demand drafts for placing the deposits.

(c) Introduction for opening of the accounts was not obtained and in some cases the signatures on the specimen signature cards were notarized before the notary public. Photographs of all the authorized officials of the cooperative

societies/ cooperative banks were not obtained. This is not in conformity with the procedure to be followed for opening of deposit accounts.

(d) The names and signatures of the office-bearers/directors of the cooperative societies/cooperative banks were missing from the copies of byelaws indicating thereby that original byelaws or certified copies thereof were not obtained by the branch officials.

(e) The deposit receipts were not directly given to the petitioner depositors against their acknowledgment. They were given to the middlemen/brokers who had brought the documents for keeping the deposits. No record of having delivered the receipts have been kept by the branches.

(f) The branches issued certificates to the petitioner depositors giving details of the deposits. There was no mention in them that loans have been taken against the deposits.

(g) Issue of such certificates is not in conformity with banking practice and internal instructions of the two banks.

(h)

(i) The branches allowed advances against the deposits. The resolutions for availing of the loans purported to have been passed by the cooperative societies/cooperative banks were brought to the branches by the middlemen/brokers.

(j) The authorized signatories did not remain present themselves to sign and execute the loan documents, contrary to the bank's procedure and internal guidelines.

(k) When an advance is granted to a borrower, it is the banking practice that the amount is credited to the account of the borrower. The borrower in turn, issues cheques on his borrowal account in favour

of third parties for the drawings to be effected. The bank branches did not follow this procedure. The disbursement of the loan against the deposits was through cheques/demand drafts issued in favour of S.P. Investment and others. This is an unusual practice. As the advance was to third parties against the fixed deposits of the cooperative societies/cooperative banks, the branch managers should have been put on guard.

(l) Loans were granted against the deposits without maintaining the stipulated margin in certain cases and in excess of the discretionary powers in many cases by the branch managers.

(m) The branch officials were told by the middlemen/brokers that deposits could be arranged provided advances are granted against the deposits. Such an arrangement was agreed to by a number of bank officials.

(n) Loans against the deposits were taken soon after placing the deposits with the branches. In some cases the loans were disbursed on the very day or on the next day of placing the deposits. As the taking of loans against the deposits was not a solitary instance of one or two cases but in respect of all the deposits kept and that too soon after placing of the deposits, the branch managers had not exercised due diligence.

5. Fictitious accounts in the names of some cooperative societies/cooperative banks have been opened for siphoning off the funds. The petitioner depositors denied having opened such accounts during their submissions before the Committee. The documents such as copies of resolutions passed for placing the deposits, specimen signatures recorded differ from those at the two bank's branches when compared with those on the records of the petitioner depositors. The documents have been fabricated with a view to perpetrating the fraud. The fabrication/replacement of the documents could be either by the middlemen/brokers who had handled them or by

the branch officials themselves.

6. The fraud could be perpetrated by the middlemen/brokers on account of serious lapses on the part of the branch officials of the two banks. It was not merely procedural lapses but grave irregularities knowingly committed by them that enabled the middlemen/brokers to siphon off large amount of bank funds."

19. The Committee noted the following acts of omissions and commissions on the part of the co-operative societies/co-operative banks :-

"(a) The cooperative societies/cooperative banks are required to obtain prior permission of the Registrar of Cooperative Societies for depositing surplus funds outside the cooperative fold as required in terms of Section 71(1)(f) of the Gujarat Cooperative Societies Act, 1961. Such permission was not obtained by the cooperative societies/cooperative banks. Some of the cooperative societies/cooperative banks have mentioned that they had written to the District Registrar of Cooperative Societies seeking permission to deposit excess funds with the nationalized banks, but no reply or permission was received from the Registrar. Some of the cooperative societies/cooperative banks have also mentioned that when they enquired from the Registrar's office they were informed that no permission was required to deposit the funds with the nationalized banks.

(b) Normally, the cooperative societies/cooperative banks would place the deposits with nearby branches of banks in their area of operation. all the petitioner depositors are either in Kheda or Vadodara or Panchmahal districts but the deposits have been kept with branches of Bank of Baroda and Indian Bank in Surat and Bharuch, a distance of over 200 kms. from their area of operations, although there are branches of these banks in their vicinity.

- (c) The petitioner depositors invariably did not deal with the branches of the bank directly. They relied on intermediaries/brokers for placing the deposits.
- (d) The petitioner depositors did not visit the branches of Bank of Baroda/Indian Bank for opening of the deposit accounts. They sent the documents for opening of deposit accounts alongwith the Demand Drafts for placing the deposits through intermediaries/brokers.
- (e) The petitioner depositors did not fill in the pay-in slips themselves for placing the deposits with the two banks.
- (f) The resolutions passed by the cooperative societies/cooperative banks for placing the deposits were in general terms. They did not specify the name of the branch of the bank where the deposits were to be placed and even the amounts to be deposited were not mentioned in some cases.
- (g) A few of the petitioner depositors did not send the specimen signature cards, photographs, etc. for opening the deposit accounts.
- (h) Although cooperative societies/cooperative banks deal in finances, they did not insist upon the deposit receipts for the funds kept with the branches of the two banks. They were content with xerox copies of original FDRs or certificates issued by the two banks giving details of the deposits received from them. The petitioner depositors have mentioned that they were not given original FDR receipts so that the deposits will not be prematurely encashed or loans availed of against them. As incentives were paid on the deposits, it would be a loss to the middlemen/brokers, unless the deposits are kept up to their due dates.
- (i) Commission/incentive varying from 3.8 to

25 per cent was received by the petitioner depositors. The cooperative societies/cooperative banks could be aware of the fact that nationalized banks do not pay such commission. They should have been, therefore, put on guard. According to the cooperative societies/cooperative banks they were advised by the intermediaries/banks that there are large industrial units in Surat which are in need of bank finance. The funds placed by them in deposits will be utilized by the two banks for lending to these units in Surat and the commission/incentives will be paid out of the interest on the advances granted to the units.

- (j) The commission/incentive was received by the cooperative societies/cooperative banks in demand drafts or in cash or partly in demand drafts and partly in cash. Although the cooperative societies/cooperative banks have stated that the incentives/commission received by them have been accounted for in their books, it is difficult to assume that the entire amount was brought into their books of accounts, as part of the amount was received in cash. Further, it was observed that fictitious accounts were opened in the names of some of the cooperative societies/cooperative banks in certain cases and drafts have been encashed through these accounts. It is possible that a portion of the commission has gone into the coffers of the office bearers and the officials of the cooperative societies/cooperative banks.

- (k) While, out of 19 petitioners, 18 have stated that commission/incentive has been received for placing the deposits, the Shree Bharat Cooperative Bank Ltd., is the only petitioner depositor, which has stated that no incentive was received by it. This bank has branches in more than one state and the surplus funds would have normally been diverted to a centre like Mumbai for the purpose of lending instead of keeping in deposits at Udhna

branch of Bank of Baroda in Surat for a period of one year. Further, this petitioner depositor had not kept in the past deposits with this branch and the timing of placing the deposits gives an impression that the bank was also induced to keep the deposits because of the incentive/commission offered. The true facts could come out only through investigation by an external agency like the CBI."

20. It is in light of the voluminous record gone through by the five investigation teams (each comprising of three officers, one of them being an officer of the concerned appellant-bank) and the aforesaid unanimous findings given by the Committee consisting of two very senior officers of Reserve Bank of India and one senior officer of Bank of Baroda/one senior officer of Indian Bank that we have examined the contentions of the learned Counsel for the parties.

21. What clearly emerges from the case of the appellant-banks is that undisputedly Bank of Baroda and Indian Bank (hereafter referred to as "the two banks") had received monies from the co-operative societies/co-operative banks running into about Rs.30 Crores for investment in fixed deposit receipts for a period of one year. On the next day or within a week thereafter, advances were made against such fixed deposit receipts, not only the hurry with which the loan applications were placed before the officials of the appellant banks but also the fact that the pay orders for the loan amounts were "asked for" in favour of a third party - in most cases the same party called "S.P. Investments" was sufficient to arouse the suspicion of even a novice or a layman but senior officers of the appellant banks hurriedly sanctioned and disbursed the loans against security of the fixed deposit receipts of cooperative societies/cooperative banks and, thereafter, liquidated those deposit receipts on ground of non-payment of loans. When Bank of Baroda itself has stated before the Committee that eight of its officers including Branch Managers of six branches involved at Surat were suspended and were served with the chargesheet (the allegations in which are set out in para 8.3 hereinabove), it is not open to Bank of Baroda to contend that its officers did not play any role in the fraud in question. The question involved in these petitions is not whether "X", "Y" and/or "Z" officers of Bank of Baroda and/or Indian Bank are guilty of the fraud and whether they are required to

be imprisoned. In fact, the petitions are not for fixing criminal liability of any individual.

22. When the appellant-banks admitted having received the amounts from the co-operative societies/co-operative banks for investment in fixed deposit receipts for one year, the burden was obviously on the appellant-banks to prove that the advances granted against the fixed deposit receipts by pledging the fixed deposit receipts as securities was done at the instance of and with the consent of the depositors. A perusal of the complaints filed by the Bank of Baroda against its officers (para 8.2 hereinabove) and also a perusal of the chargesheet issued by Bank of Baroda to its officers who were Managers in-charge of its six branches at Surat involved in this operation (Chapter 11 of the Report and para 8.3 hereinabove), and so also the acts of commission and omission attributed by Indian Bank to its officers (Chapter 12 - Pages 139, 140 and Page 152 of the Report) leave no room for doubt that primarily it was the officers of the appellant banks who had acted fraudulently in allowing advances to be made against the fixed deposit receipts without ensuring that such advances were made or the FDRs were permitted to be encashed only by the duly authorized office bearers of the co-operative societies/banks. The appellant-banks cannot, therefore, be permitted to wriggle out of their civil liability to repay the fixed deposit receipt amounts to the co-operative societies/banks. When these facts emerge from the complaints filed by Bank of Baroda itself and from the chargesheet issued by Bank of Baroda to its officers who were Branch Managers of the concerned six branches at Surat at the relevant time, the Bank cannot be absolved from its liability merely on the ground that some office bearers of the co-operative banks/societies had acted imprudently in investing their monies with the branches of Bank of Baroda in Surat at a distance of 200 kms. from Kheda where the co-operative societies and co-operative banks are situate. Even if some office bearers of the co-operative societies were negligent or made some lapses, the facts on record gathered by the Committee indicate that primarily it was the responsibility of the officers of the two appellant banks to ensure that all the documents such as account opening forms and the other documents while depositing moneys as well as the applications for advances, resolutions for premature encashment and other documents for loans were signed/passed by authorised office bearers of the co-operative societies/co-operative banks. The findings recorded by the Committee in Chapter 7 in Chapter 13 of its report as set out in paragraph 5.5 of

this judgment fully justify the claim of the cooperative societies/ cooperative banks for a direction that the amounts of fixed deposit receipts be refunded to them.

23. At this stage, we may only state that the defence urged by the Indian Bank is regarding the claims of the Dabhoi Nagrik Sahakari Bank Ltd. and the Dabhoi City Credit Cooperative Society Ltd.. It appears that there was a controversy about the loss of seven blank fixed deposit receipts from the custody of the officials of the Indian Bank. The Indian Bank has filed a complaint against the office bearers of the Dabhoi City Cooperative Credit Society Ltd. and the Dabhoi Nagrik Sahakari Bank Ltd.. We will be passing separate orders in respect of the said two parties. As regards the other parties, the facts are similar to the facts in the matters of Bank of Baroda. In paragraph 9 we have already set out the facts as revealed during internal investigations by the Indian Bank itself and the acts of commission and omissions noticed by the Indian Bank itself in so far as its officers at the three concerned branches are concerned. These facts indicate that the facts in respect of all the other depositors are similar to the facts in the appeals filed by the Bank of Baroda.

24. In our view, none of the decisions cited on behalf of the appellant banks come in the way of acceptance of the Report.

24.1 In *State Bank of India vs. Smt. Shyama Devi*, AIR 1978 SC 1263, the Apex Court examined the principles which govern the vicarious liability of an employer for the loss caused to a customer through the misdemeanour or negligence of an employee and held that the employer is not liable for the act of the servant if the cause of the loss or damages arose without his actual fault or privity and without the fault or negligence of his agents or servants in the course of their employment. The master is liable for his servant's fraud perpetrated in the course of master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. There is no difference in the liability of the master for wrong whether for fraud or any other wrong committed by the servant in the course of his employment, and it is a question of fact in each case whether it was committed in the course of the employment. In the facts of that case, the Apex Court held that the fraud committed by the employee was as an agent of the client and not within the scope of his employment with the bank.

However, in the facts of the present case, there cannot be any dispute about the fact that when the officers of the two appellant-banks had accepted the amounts from the co-operative societies/banks, the amounts were invested in the fixed deposit receipts and thereafter it was in the course of their employment with the appellant banks that the officers had given advances against the security of such fixed deposit receipts and the strength of the documents which were found to be not genuine authorizations given by the co-operative societies/ co-operative banks through their duly authorized office bearers. The above decision further makes it clear that the vicarious liability of the bank will arise in case of any wrong committed by the bank employee in the course of his employment, and, therefore, if the employee's act is not fraudulent but found to be negligent or wrongful in any other matter, even then the bank will be vicariously liable.

24.2 In *M/s. Dedha & Co. vs. M/s. Paulson Medical Stores*, AIR 1988 KER 233, the Kerala High Court held that both the plaintiff and the defendant were joint tortfeasors and, therefore, the suit for indemnity against the defendant was held to be not maintainable. In the present case, the petitioners are co-operative banks/co-operative societies and not their office bearers against whom the appellant banks have made vague allegations. When the appellant banks themselves have filed complaints against their own officers and have also suspended them and issued chargesheet in departmental inquiries, stating that those officers acted fraudulently, the appellant Banks cannot be exonerated of their vicarious liability by making allegations against office bearers of co-operative banks or societies.

24.3 Mr Darshan M Parikh, learned counsel for the appellant banks has placed strong reliance on the decision of the Apex Court in *Immani Apa Rao vs. Gollapalli Ramalingamurthi*, AIR 1962 SC 370, and particularly on paragraphs 11 to 15. In the facts before the Supreme Court, two individuals had perpetrated a fraud to defeat a third party and, therefore, when one of them filed a suit for taking assistance of the Court to take advantage of the fraud, the Court denied its assistance. However, in the instant case, on the basis of the material on record it would appear that the office bearers of the co-operative societies/co-operative banks were negligent in entrusting the matters to middlemen, but their complicity is not proved. Admittedly, injury is caused to the co-operative societies/co-operative banks which were not party to the perpetration of the

fraud and, therefore, the co-operative societies/ co-operative banks which have approached this Court cannot be denied any relief on the basis of *pari delicto*.

Having carefully gone through the aforesaid decision, we are of the view that the principles laid down therein would apply only if it was found that the co-operative societies/ co-operative banks were themselves guilty of the fraud. In the facts of the present case apart from the fact that the high-powered Committee comprising of two senior officers of Reserve Bank of India and one officer of each of the appellant banks has not given any finding of fraud against the co-operative societies/ co-operative banks, we see no reason not to accept the finding that the officers of the appellant-banks were premarily responsible for the fraud and that without their connivance, the fraud could not have taken place and, therefore, the principles laid down in *Immani Apa Rao's case* (*supra*) would not apply.

25. Coming to the claim of the cooperative banks/cooperative societies for interest, we are not inclined to accept the said prayer because the Committee has given cogent reasons in paragraph 7(b) in Chapter 13 of the report for not recommending payment of any interest to the cooperative societies/ cooperative banks on the disputed amounts. However, in order to ensure that the appellant banks do not delay payment of the fixed deposit amounts to the cooperative societies/ cooperative banks, we are inclined to issue appropriate directions to the appellant banks regarding payment of interest after the date of this judgment.

26. After giving our anxious thoughtful consideration to the submissions made by the learned counsel for the appellant banks as well as the original petitioners i.e. the co-operative societies and co-operative banks, we are of the view that the parties are required to be directed to implement the report in its entirety in so far as the same touches the civil rights and liabilities of the parties in respect of the fixed deposit receipt amounts which are the subject matter of this group of matters.

27.(A) We direct Bank of Baroda to act in accordance with the recommendations contained in paragraphs 7(a), (b) and (c) in Chapter 13 of the report dated 20.3.2001 given by the Committee headed by Mr JR Prabhu, appointed pursuant to the judgment dated 2.5.2000 and interim orders dated 28.6.2000 of this Court as confirmed by the order dated 16.10.2000 of the Hon'ble Supreme Court, and to

pay the parties (original petitioners) disputed amounts as set out in Annexure 3 Part A to the aforesaid report by October 31, 2003, subject to compliance with the terms and conditions stipulated in para 7(a) of the aforesaid report.

(B) We direct the Indian Bank to pay Roshan Cooperative Credit Society Ltd., the Godhra Nagrik Cooperative Credit Society Ltd. and Shree Sardar Patel Cooperative Credit Society Ltd. the disputed amounts as set out in Annexure 3 Part B to the aforesaid report dated 20.3.2001, subject to compliance with the terms and conditions stipulated in para 7(a) of the aforesaid report.

(C) The admitted amounts mentioned in Annexure 3 of the report, with interest at the rate applicable to savings bank accounts as indicated in para 7(b) in Chapter 13 of the Committee report, that is Savings account interest rate applicable for the relevant period, if not already paid to the original petitioners-respondents in these appeals, shall be permitted to be withdrawn by them.

(D) The appellant banks shall carry out the aforesaid directions regarding re-payments of fixed deposit receipt amounts to the respondent cooperative societies/ cooperative banks by November 30, 2003. In case of any delay, the appellant banks shall pay the respondent cooperative societies/ cooperative banks interest at the rate of 9% per annum from December 1, 2003 till the date of payment.

(E) The parties shall bear the costs of the writ petitions as well as these appeals throughout.

All these appeals are disposed of in terms of the aforesaid directions.

Sd/-

(KSHITIJ R. VYAS, J.)

Sd/-

(M.S. SHAH, J.)

sundar/zgs

At this stage, the learned counsel for the appellant-banks pray for stay of operation of this judgment for two months in order to have further recourse

in accordance with law.

Since we have already granted the appellant-banks time upto 30th November, 2003 to comply with the directions, in our view, no stay is required to be granted.

Sd/-

(KSHITIJ R. VYAS, J.)

Sd/-

(M.S. SHAH, J.)

sundar/zgs